

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Case No. 32368
	:	
UNITED CONTRACTORS, INC.,	:	
	:	
Respondent.	:	Decision No. 12053-B
	:	

DECISION

The above-entitled matter having come on for hearing before the court on June 17, 1974, pursuant to a notice of hearing brought by the petitioner through the Attorney General's Office. The petitioner appearing by Assistant Attorney General Chars D. Hoornstra; the respondent appearing by Attorney Robert E. Walsh. The matter before the court is based upon a petition for enforcement sought by the petitioner WERC seeking a judgment pursuant to Section 111.07 (7) of the Wisconsin Statutes, confirming and enforcing all of the provisions of the orders issued by the WERC and concerning the respondent United Contractors, Inc. By agreement, the court took the matter under advisement with leave to counsel to file briefs in support of their respective contentions, which have been received and reviewed. Now, therefore, the court finds and determines as follows:

The original action before the Wisconsin Employment Relations Commission was based upon a complaint by the Construction and General Laborers' Union Local 464, alleging a violation by the employer United Contractors, Inc., of a collective bargaining agreement. Hearings were held and an arbitration award issued on June 13, 1973, directing the respondent to comply with certain awards of the arbitrator as set forth in detail in the award of June 13, 1973.

For the first time the respondent seeks a review of the award in this proceeding and contends that no officer of the respondent corporation ever entered into a contract with Laborers' Local 464 and therefore the WERC was without jurisdiction to arbitrate the alleged dispute.

It appears from the transcript of the record that an adjourned hearing was held on March 1, 1973, at which time Jim Mews, President of United Contractors, Inc., appeared and gave testimony. At that March 1, 1973, hearing the transcript reveals that Exhibit 1, the contract in question, was offered and received in evidence without any objection made by the President of United Contractors Inc. At no time up until October 4, 1973, well after the date of the June 13, 1973, award did respondent raise the question that no contract existed between the respondent and its employees.

Section 227.16 of the Wisconsin Statutes provides for a review of any award such as the one in question by any person agrieved with such award and further provides that such review be instituted by serving a petition upon the agency within thirty days after the service of the decision of the agency upon all of the parties. No such petition for review was ever served up until this date by the respondent upon the petitioner.

A careful review of the transcript and all of the records in the file indicates that on October 4, 1973, Jim Mews, President of the respondent, forwarded a letter to the WERC, contending that no officer of the respondent had ever entered into a contract with Laborers' Local 464, and advising the WERC that the respondent does not have any agreement or obligations and that the respondent does not believe the Department had any jurisdiction in the case. The letter was considered a motion to dismiss by the arbitrator and was rejected as not being timely. Respondent now contends that a hearing should have been granted on the question of whether a contract existed or not, and that the proceeding should be remanded for further consideration on the question of the existence of a contract.

The position of the petition is that the respondent has not shown good cause for failure to introduce evidence at the time of the hearing concerning the absence of a contract between the respondent and its employees.

It appears clear from the record that upon receiving the arbitration award dated June 13, 1973, respondent had the right to have the matter reviewed by a court upon proper petition under Section 227.16 of the Wisconsin Statutes, and neglected to follow that remedy. The record further clearly shows that the president of the respondent acquiesced in the receipt in evidence of the document purporting to be a contract, and gave testimony without objection as a result of which the arbitration award was made.

Upon the entire record the court is satisfied that the respondent has not shown any reasonable cause for failure to introduce evidence concerning the non-existence of a contract when the respondent had ample opportunity to do so and the record itself sustains the award made by the arbitrator in all respects.

Upon the entire record the court will order that a judgment be entered in conformity with the order of the Wisconsin Employment Relations Commission concerning the arbitration of the dispute between the respondent and its employees. Such judgment will confirm all of the provisions of the orders made by the WERC herein and will provide for enforcing the provisions of the Wisconsin Employment Relations Commission orders in this matter.

It is ordered that allowable costs and disbursements be awarded to the petitioner.

Dated at Waukesha, Wisconsin, this 23rd day of August, 1974.

BY THE COURT:

Clair Voss /s/

Circuit Judge